

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 99-740

May 3, 2000

ESSENTIAL.COM, INC.  
Petition for Finding of Public  
Convenience and Necessity to  
Provide Service as a Local Exchange  
Carrier as a Reseller and as a Reseller  
Interexchange Telephone Utility

ORDER GRANTING AUTHORITY  
TO PROVIDE LOCAL EXCHANGE  
SERVICE AS A RESELLER AND  
INTEREXCHANGE SERVICE AS A  
RESELLER AND APPROVING  
SCHEDULE OF RATES AND TERMS  
AND CONDITIONS

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WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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In this Order, the Commission grants essential.com the authority to provide competitive local exchange service as a reseller, and intrastate interexchange service as a reseller in the State of Maine, and approves the Company's Terms and Conditions and Rate Schedules. We also exempt essential.com from the requirements of Chapter 210, *Uniform System of Accounts*, and of 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

**I. APPROVAL OF APPLICATION TO SERVE**

On November 12, 1999, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, essential.com filed a petition with the Commission requesting authority to provide local exchange telephone service as a reseller and interexchange service as a reseller in Maine. Before we grant approval under section 2102 for another public utility to provide service, 35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require another utility to provide service in a location where utility is already authorized to provide, or is providing, the same or similar service.

47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service,

protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

We find that granting essential.com the authority to provide local exchange and interexchange services in Maine will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b).

essential.com's application provides reasonable information indicating that its financial and management capabilities are adequate to provide local and interexchange services in Maine.

## **II. SERVICE TERRITORY**

### **A. Interexchange Service Authority**

essential.com has requested authority to provide interexchange service as a reseller throughout the state. We grant that authority.

### **B. Local Service Authority**

essential.com has requested authority to provide local exchange service throughout the state. It states that it will offer service only as a reseller of local exchange service provided by other local exchange carriers (LECs) in that area. We define local resale as the offering of local exchange service purchased from another competitive local exchange carrier (CLEC) pursuant to 47 U.S.C. § 251(b)(1) or from an incumbent local exchange carrier (ILEC) at a wholesale discount pursuant to 47 U.S.C. § 251(c)(4). The purchase of unbundled network elements from an ILEC and their use in providing local exchange service is facilities-based service and is not resale. essential.com's authority to provide local exchange service is limited to resale unless it obtains further authorization from the Commission.

If essential.com wishes to expand the scope of its authority in the future to provide facilities-based switched local exchange services, it shall seek approval pursuant to 35-A M.R.S.A. § 2102, requesting the Commission to amend this Order. essential.com shall simultaneously file amended Terms and Conditions pursuant to 35-A M.R.S.A. § 307 that state its proposed service territory for facilities-based local exchange service. essential.com's proposed service territory for facilities-based local exchange service shall be limited to those areas in which it will be ready to provide facilities-based switched local exchange service within a reasonable period of time. The application shall include information establishing that readiness. It is not necessary for a CLEC with existing authority to present a full application in order to request additional service authority. The Commission will act expeditiously on any such application and revisions of Terms and Conditions.

## **III. APPROVAL OF TERMS AND CONDITIONS AND RATE SCHEDULES**

We allow the terms and conditions proposed by essential.com to go into effect. essential.com has used the Commission's standard terms and conditions that comply with Maine law and the Commission's Rules. We have reviewed the Company's petition, Terms and Conditions, and Rate Schedules, and they appear to comply with Maine law and the Commission's Rules. Nevertheless, if there is any conflict between a provision in essential.com 's terms and conditions and the Commission's Rules or a statute, the rule or statute will control. Included in the Terms and Conditions is a provision stating that in the event of such a conflict, the statute or the Commission's Rule will control.

In general, the Commission believes that a competitive telecommunications market results in services and rates that benefit the public. We believe that the acceptability of essential.com 's services and rates in the market place provides an adequate test of the reasonableness of the Company's rates. Accordingly, we allow the rates proposed by essential.com to go into effect.

#### **IV. INTERCONNECTION AGREEMENT(S)**

In order to provide local exchange service, a CLEC must, as a practical matter, obtain an interconnection agreement with the ILEC(s) providing service in any area where it intends to provide service. In the absence of such an agreement, it will not be possible for essential.com's customers to call customers of the ILEC(s), and vice versa. Interconnection agreements are governed by 47 U.S.C. § 252, and must be approved by this Commission.

If a CLEC makes a bona fide request for an interconnection agreement with an ILEC that is a "rural telephone company" as defined in 47 U.S.C. § 153 (37), the "rural exemption" of 47 U.S.C. § 251 (f) will apply. All of Maine's independent incumbent local exchange carriers are "rural telephone companies." A rural telephone company is not required to negotiate an interconnection agreement or provide interconnection until after the Commission, pursuant to 47 U.S.C. § 251(f)(1)(B), finds that the requirement "is not unduly economically burdensome, is technically feasible, and is consistent with [the universal service provisions of] section 254 . . . ." Although the service territory we grant today for resold services is statewide and essential.com's terms and conditions do not limit its service territory, as a practical matter it cannot offer local exchange service in the service territory of a rural ILEC until such time as that ILEC's rural exemption is terminated.

On November 16, 2000, in Docket No. 99-674, the Commission approved an agreement between essential.com and Bell Atlantic pursuant to 47 U.S.C. § 252. As a condition of providing local exchange service, essential.com must comply with the terms of any interconnection agreements that it has reached with any ILECs and that have been approved by the Commission.

**V. PAYMENT OF ACCESS CHARGES**

Our approval of essential.com's application to provide interexchange service in Maine is conditioned on the payment of access charges to local exchange carriers (LECs) who have on file with the Commission approved access charge rate schedules.

The Commission has granted authority to essential.com to provide interexchange service as a switchless reseller.<sup>1</sup> Switchless resellers do not pay access charges to local exchange carriers. Instead, access charges are paid by an underlying facilities-based interexchange carrier. As a condition of granting authority to a switchless reseller to provide intrastate service in Maine, its underlying facilities-based carrier must also have authority to provide intrastate service in Maine. essential.com has stated that Qwest will be the underlying carrier from which it purchases interexchange services that it resells. Qwest is authorized by the Commission to provide intrastate interexchange service and does pay access charges for the intrastate interexchange services it sells to switchless resellers providing interexchange service in Maine. If essential.com begins to use another underlying carrier, it shall notify the Commission as required by the ordering paragraphs. If essential.com begins to provide a facilities-based interexchange service, it shall notify the Commission and all LECs from which it obtains access, as required by the ordering paragraphs.

**VI. WAIVERS; REPORTING REQUIREMENTS**

As a condition of providing local exchange service, essential.com must comply with the terms of any applicable Commission orders or rules that may govern local interconnection and compensation for interconnection. essential.com shall also comply with any applicable Commission Rules or orders that govern universal service, public safety and welfare, service quality and consumer rights.

Pursuant to sections 11(A) and 12(A) of Chapter 280, which govern carriers' interexchange activities, essential.com is exempt from Chapter 210 of the Commission's Rules, which governs telephone utility accounting and annual financial reports, and from 35-A M.R.S.A. §§ 707 and 708, which govern approvals for reorganizations and contracts with affiliated interests. Although essential.com has not requested waivers from the requirements of Chapter 210, and from 35-A M.R.S.A. §§ 707 and 708 for its local exchange service, the Commission has the authority to grant such waivers on its own motion, and we do so. Because essential.com's rates and

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<sup>1</sup>We define switchless resellers as entities which do not own, lease, or control any switching facilities, or private lines, that it will use to provide telecommunication services in Maine. A reseller who owns a switch in another state, and plans to use that switch to switch or carry Maine traffic, is a switched reseller. A reseller who does not own facilities in Maine or any other state, or who owns facilities in another state but does not plan to use that switch to carry Maine traffic, is a switchless reseller.

operations are likely to be subject to market forces, we do not see any present need to subject the Company to those requirements.

However, the Company must report its annual intrastate gross operating revenues, its revenues derived from sales to other carriers, and its annual intrastate minutes for use for the purpose of determining its regulatory assessment.<sup>2</sup> If essential.com resells service to other switched or switchless telephone service providers, the Company must maintain its records so that it may separately identify those sales. Pursuant to Chapter 280, § 11(B), essential.com

shall maintain records sufficient to identify and to allow auditing of traffic volumes, intrastate interexchange billings for both retail and wholesale services, and all information that is necessary to calculate access or interconnection charges in accordance with this Chapter. Those records shall be maintained for a minimum of 2 calendar years.

The exemptions from the affiliated interest approval requirements of 35-A M.R.S.A. §§ 707 and 708 granted by Chapter 280, § 12(A) are subject to the notice requirements contained in Chapter 280, §§ 12(B) and (C) and in the ordering paragraphs below.

In addition, essential.com shall inform the Commission of any changes to its corporate structure and ownership and of any changes in the name under which it does business, as set forth in the ordering paragraphs below. If necessary, it shall also refile its rate schedules and terms and conditions to reflect its new identity.

## **VII. OTHER REQUIREMENTS**

essential.com shall comply with all applicable rules of the Commission and statutes of the State of Maine, including the customer notification rule described in the ordering paragraphs below.

## **VIII. ORDERING PARAGRAPHS**

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of essential.com to provide competitive local exchange telephone service as a reseller in the State of Maine, and interexchange service as a reseller in the State of Maine;

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<sup>2</sup>The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

2. Exempt essential.com from the requirements of Chapter 210 of the Commission's Rules, except that it must report the revenue and minutes of use information that is requested by the Commission, on or before April 1 of each year;

3. Exempt essential.com from approval requirements of 35-A M.R.S.A. §§ 707 and 708, but essential.com shall provide notice to the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707 (1)(A), that results in a merger, sale or transfer of a controlling interest of essential.com or of any entity that owns more than 50% of essential.com. The notice required by this subsection shall be filed within 10 days following any reorganization described herein, as required by Chapter 280, § 12(B). As required by Chapter 280, § 12(C), essential.com shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and any change of its contact person. essential.com shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, essential.com shall amend its rate schedules and terms and conditions to reflect any change in identity; and

4. Order that essential.com 's proposed terms and conditions and rate schedules (pages Maine P.U.C. Tariff No. 1, Notice pages 1 and 2, Original Title Sheet, Original Sheets 1-10, 12, 13, 15-40 (all filed October 15, 1999); and Original Sheets 11, 14 and 41 (filed March 27, 3000) ), attached to this Order, shall be effective on the date of this Order;

5. Order that essential.com, or an underlying facilities-based interexchange carrier authorized to provide interexchange service in Maine, shall pay interexchange access charges as required approved access rate schedules filed by local exchange carriers.

essential.com shall notify the Commission of any change in its underlying carrier within 30 days following the change, essential.com shall immediately inform the Commission and all local exchange carriers in the State of Maine from which essential.com will be purchasing access services if there is any change in its operations that will result in its carrying, switching, or any processing of any of its own traffic, at which time essential.com shall begin to pay access charges directly to those local exchange carriers that have approved access charge schedules on file with the Commission; and

6. Order that essential.com shall comply with all applicable rules of the Commission, including the requirement of Chapter 280 § 10 that interexchange carriers provide notice to all affected customers of an increase to any rate that is greater than 20% to all affected customers.

Dated at Augusta, Maine, this 3<sup>rd</sup> day of May, 2000.

BY ORDER OF THE COMMISSION

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Raymond J. Robichaud  
Acting Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
   Nugent  
   Diamond